

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.13660 of 2002

DATED: 18.07.2007

Between:

M/s Vijayalakshmi Youth Association Rice Mill,
Purushothampur village,
Itchapuram Mandal, Srikakulam District rep. by its
Organiser N.Krishna Rao

.. Petitioner

And

Transmission Corporation of A.P. Limited,
(A.P.TRANSCO) rep. by its
Chief Managing Director,
Vidyut Soudha, Khairatabad, Hyderabad,
and others.

.. Respondents

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ORDER:

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This writ petition is filed by the petitioner-Rice Mill questioning the order, dated 20.02.2002, passed by the Superintending Engineer, Assessment Circle, Andhra Pradesh Eastern Power Distribution, Visakhapatnam-third respondent.

2. The petitioner is a non-Trading Rice-Mill, and in order to run machinery, the petitioner obtained power supply from the respondents' Corporation by entering into an agreement, and as per the terms and conditions of power supply notified by the respondents' Corporation, the petitioner was availing power supply with service connection bearing No.381 of Purushothampur Village of Srikakulam District. The Assistant Divisional Engineer, Operation, Eastern Power Distribution Company of A.P.Limited, (A.P.Transco), the fourth respondent herein, made inspection on 25.10.2000 and registered a case against the petitioner-Rice Mill on the ground that it has indulged in pilferage of energy. Pursuant to the initiation of proceedings on account of pilferage of energy, the second respondent passed a provisional assessment order against the petitioner-Rice Mill demanding an amount of Rs.2,06,299/- as the estimated loss sustained by the respondents' Corporation due to pilferage of energy by the petitioner and there was a demand for immediate payment of 50% of the said amount for restoration of the power supply. As against the said

provisional assessment order, in earlier occasion, the petitioner approached this Court by filing W.P.2234 of 2001 and it was disposed of by an order dated 19.02.2001 subject to the condition of the petitioner depositing an amount of Rs.20,000/- pending final assessment proceedings. It is further stated by the petitioner that an amount of Rs.20,000/- was already deposited by it and power supply was restored. But, thereafter, final assessment proceedings were taken up, wherein, the third respondent-Superintending Engineer, Assessment Circle, Visakhapatnam, after conducting necessary enquiry and after issuing notice to the petitioner, assessed the value of energy alleged to have been pilfered by the petitioner at Rs.1,41,396-55 ps., and after deducting an amount of Rs.20,000/-, which the petitioner-Rice Mill had already paid as directed by this Court in W.P.No.2234 of 2001, dated 19.02.2001, from Rs.1,41,396-55 ps., the impugned order, dated 20.02.2002, for payment of Rs.1,21,396-55 ps. was passed by the third respondent.

The said final assessment order, dated 20.02.2002, is mainly questioned by the petitioner-Rice Mill in view of the Amendments made to the Indian Electricity Act, 1910 by A.P.Amendment Act, 2000, saying that the Superintending Engineer, Assessment Circle-third respondent had no authority to pass an order of final assessment and he ought to have referred the matter to the Special Court i.e., I.Additional District Judge of Srikakulam District.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

4. It is the case of the petitioner that having regard to the amendment made to the Indian Electricity Act, 1910, by insertion of Section 49-A therein by the Indian Electricity (Andhra Pradesh

amendment) Act, 2000, and particularly under Section 49-C (5) of it, when any case pending before any Court or any other authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, stand transferred to the Special Tribunal having jurisdiction as if the cause of action also stood transferred to the Tribunal, and in that view of the matter, as the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 came into force from 31.07.2000, and as much as inspection itself was made on 25.10.2000, the third respondent had no authority to decide the case.

5. The learned counsel for the petitioner also relied on the judgment of this Court in the case of **CHEEDI RAMA RAO vs. TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED (A.P.TRANSCO), VIDYUTHSUDHA, HYDERABAD**^[1].

6. On the other hand, the learned Standing Counsel appearing for the respondents submitted that by virtue of the Indian Electricity Act, 2003, the earlier enactment of Indian Electricity Act, 1910 is repealed. Further, there is only a Special Court constituted under Section 153 of the Indian Electricity Act, 2003.

7. In the instant case, it has to be seen that the impugned proceedings were initiated pursuant to the inspection on 25.10.2000 prior to the enforcement of the Indian Electricity Act, 2003. Certain amendments were made to the Indian Electricity Act, 1910 by the Indian Electricity (Andhra Pradesh amendment) Act 35 of 2000. From a reading of the provisions under Sub-Sections (1), (2), (3), (4) and (5) of Section 49-C of the Indian Electricity (Andhra Pradesh amendment) Act, 2000 made to the Indian Electricity Act, 1910, it is clear even with regard to the civil liability, whereunder the powers are conferred only

on the Special Tribunal of the Court constituted under Section 49-C of the Indian Electricity (Andhra Pradesh amendment) Act, 2000. Even the cases, which were pending, as on the date of amendment stood transferred as if the cause of action arose after the commencement of the Indian Electricity (Andhra Pradesh amendment) Act, 2000. Even in the Indian Electricity Act, 2003, the only change is that the Special Court is constituted in place of the Special Tribunal. In either case, either based on the Indian Electricity (Andhra Pradesh amendment) Act 35 of 2000 made to the Indian Electricity Act, 1910, or under the provision of the Indian Electricity Act, 2003, the power conferred on fixation of civil liability for theft of energy is only on the Special Court, which is hitherto Special Tribunal.

In view of the above circumstances, further this Court relying on the judgment referred above also supports the case of the petitioner that only the Special Court constituted in place of the Special Tribunal will have the jurisdiction to pass an order awarding compensation in terms of money for theft of energy.

Having regard to the above facts and circumstances of the case, it is clear that the order, dated 20.02.2000, passed by the Superintending Engineer, Assessment Circle, Visakhapatnam, the third respondent herein, is without any jurisdiction and is liable to be set aside and is accordingly set aside. However, it is open for the respondents to move appropriate application before the competent Tribunal or the Court for fixation of civil liability on account of the alleged pilferage of energy by the petitioner. It is also made clear that such an application can be moved within a period of two months from the date of receipt of a copy of this order and the amount of Rs.20,000/- , which is already paid by the petitioner pursuant to the orders of this Court, dated 19.02.2001, passed in W.P.No.2234 of 2001 shall be

subject to the result of adjudication by the competent Special Tribunal or the Court.

Subject to the above directions, the writ petition is allowed. No order as to costs.

(R.SUBHASH REDDY,J)

Dt.18.07.2007

v v

[\[1\]](#) 2003-ALD (NOC)-6-85